

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 83/SB/2020

Smt. Sarita Kanswal, age 43 years, w/o Sri Pramod Kumar, presently posted as Constable at Thana Laxman Jhoola, Rishikesh, District Pauri Garhwal (Uttarakhand).

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Pauri Garhwal.

.....Respondents

Present: Sri V.P.Sharma, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JUNE 22, 2021

Justice U.C.Dhyani(Oral)

By means of present claim petition, the petitioner seeks the following reliefs:

- (i) To quash and set aside the impugned order dated 11.02.2020 (Annexure: A 1) by which censure entry has been awarded by the Respondent No.3 in the service record of the petitioner along with its effect and operation.
- (ii) To quash and set aside the impugned order dated 11.02.2020 (Annexure: A-2) passed by Respondent No.3 for non-payment of salary for the period of 31 days from 16.08.2019 to 15.09.2019 on the ground of no

work no pay and medical leave may kindly be granted to the petitioner as she was under treatment and was unable to report on the duty due to sickness.

- (iii) To quash and set aside the suspension order dated 26.08.2019 passed by Respondent No.3 (Annexure: A-4).
- (iv) To quash and set aside the order dated 17.08.2020 (Annexure: A-5) to pay all salary for suspension period.
- (v) To quash and set aside the appellate order dated 25.06.2020 passed by Respondent No. 2 (Annexure: A-6).
- (vi) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.
- (vii) To award the cost of this petition in favour of the petitioner.

2. Facts, giving rise to present claim petition, are as follows:

2.1 The petitioner was posted as Constable in P.S. Laxman Jhoola, in the year 2019. The insinuation against her is that she got absent on 16.08.2019 without permission, which absence was recorded in General Diary (GD) dated 16.08.2019 of the P.S. Laxman Jhoola. The petitioner did not inform S.O, Laxman Jhoola or other Police Official posted there. She took an excuse that she was ill. According to the Police Department, the Lady Constable ought to have entered such fact in Sick Book and also ought to have got her departure entered for proceeding to local PHC within the jurisdiction of P.S. Laxman Jhoola. If the treatment was not available at local PHC/ local hospital, then she should have taken the permission of higher officials for going to higher center. She came back to Police Line on 15.09.2019. In this way, she unauthorizedly remained absent for 31 days from 16.08.2019 to 15.09.2019.

2.2 When she remained absent, she was issued show cause notice on 14.01.2020 along with draft censure entry under Rule 14(2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (for short, 1991 Rules). The delinquent petitioner gave her reply to the show cause notice on 17.01.2020. Explanation thus furnished was not found sufficient. She, therefore, was awarded censure entry under Rule 4(1) of the aforesaid Rules. A direction was given by the SSP, Pauri Garhwal (Respondent No.3) on 11.02.2020 to record censure entry in her character roll of the year 2019 (Copy: Annexure A-1).

2.3 The imputation, in a nutshell, is that when she was posted in P.S., Laxman Jhoola, she remained absent from P.S. concerned for 31 days

without informing her superiors. If she was really ill, then she should have caused her departure entered for proceeding to local PHC in the GD of P.S. concerned. If the treatment was not possible in local hospital, she should have gone to higher center, with the permission of her superiors. She remained absent from 16.08.2019 to 15.09.2019, for 31 days. In other words, she was 'censured' for unauthorized absence of 31 days. Since she remained absent for 31 days, therefore, after issuing a show cause notice to her, she filed a reply, which was not found sufficient. She was denied salary for 31 days on the basis of 'no work no pay' for her unauthorized absence. This order was issued on 11.02.2020 (Annexure: A-2) by Respondent No.3. The petitioner moved an application to Respondent No. 3 (Copy of representation : Annexure-A-3) for sanctioning medical leave for the period of absence. In Annexure: A-3, she explained that she informed Head Moherrir Sri Hemraj on 16.08.2019, who told her that he will get three days' casual leave sanctioned to her. According to Annexure: A-3, Head Moherir Sri Hemraj told her to go to the Medical Officer and then move an application for casual leave, which shall be got sanctioned. Her colleague wrote an application, but Head Moherrir Sri Hemraj refused to take the same. She, then, suffered from dengue. She was unable to move. The Medical Officer admitted her for treatment of dengue on 17.08.2019. Her blood platelet counts were reduced. She, in Annexure: A-3 wrote that she was moving such application through one Constable Sri Hariom and informing to SSP, Pauri Garhwal through Email that she is undergoing treatment. In contemplation of regular inquiry, her services were put under suspension *vide* order dated 26.08.2019 of Respondent No.3, (Copy of suspension order: Annexure- A 4). A show cause notice was given to the delinquent petitioner on 15.09.2019. She was asked to reply to the show cause notice, but she did not furnish any explanation. It was presumed that she has nothing to say in the matter. She was, therefore, ordered to be given only subsistence allowance, which was provided during suspension period. According to order dated 17.08.2020 (Annexure: A 5), she will not be entitled to any other wages during suspension period. Aggrieved against the award of censure entry *vide* order dated 11.02.2020 of Respondent No.3, she filed departmental

appeal, which was affirmed by Inspector General of Police, *vide* order dated 25.06.2020 (Copy: Annexure- A 6). The order of ‘no work no pay’ for unauthorized absence for 31 days was also affirmed *vide* selfsame order dated 25.06.2020. Aggrieved against the same, present claim petition has been filed.

2.4 In her claim petition, petitioner has challenged ‘censure entry’ (Annexure: A 1), ‘no work no pay’ order (Annexure: A 2), suspension order (Annexure: A 4), order of denial of salary during suspension period (Annexure: A5) and appellate order (Annexure: A 6).

2.5 Show cause notice, which was given to her on 14.01.2020 has been brought on record as Annexure: A 18, issued by Respondent No.3. *Vide* Annexure: A 19 dated 24.06.2020, a reminder was given by Respondent No. 3 to the petitioner that since she has not furnished her explanation to the show cause notice regarding salary of the suspension period, therefore, she was directed to furnish her reply. Earlier also, she was issued reminder on 14.06.2020 (Annexure: A 20) that since she has not worked from 16.08.2019 to 15.09.2019 for 31 days, therefore, she should file reply to the notice, as to why order for ‘no work no pay’, for the period of her unauthorized absence, be not issued against her.

2.6 A preliminary inquiry was conducted by Ms. Vandana Verma, Dy. S.P., Sadar, Pauri (Copy of report: Annexure- A 21). The Dy. S.P., Sadar, Pauri, submitted, in her report, that delinquent Constable’s absence from duty from 16.08.2019 to 15.09.2019 was unauthorized. Annexure: A 22 is the copy of departmental appeal to Inspector General of Police, requesting the appellate authority to set aside the punishment order for ‘censure entry’ as also the order of ‘no work no pay’ for 31 days.

2.7 She moved an application to Officer In-Charge, P.S. Laxman Jhoola for sanctioning medical leave to her from 16.08.2019 to 15.09.2019, enclosing the medical certificate.

3. C.A./W.S. has been filed on behalf of respondents. Sri Anil Joshi, Dy. S.P., Kotdwar, Pauri Garhwal has filed C.A., justifying departmental action. Documents have also been filed along with C.A.. The most

important document from the point of view of respondents, as highlighted by Ld. A.P.O., is Annexure: CA-1, which indicates that on 16.08.2019 at 09:08 hrs, the petitioner was found absent in the premises[of P.S. Laxman Jhoola]. S.O., Laxman Jhoola marked her absent in GD (Annexure: CA-1). S.O., Laxman Jhoola informed SSP, Pauri Garhwal on 21.08.2019 regarding absence of the petitioner (Copy: Annexure; CA-2-i). One Police official posted in SSP office, wrote to SSP, Pauri Garhwal on 26.08.2019 that there is no information regarding her in SSP office till date (Annexure: CA-2-ii). Copy of show cause notice dated 14.01.2020 (Annexure: CA-3-i) has been filed on behalf of respondents also. Copy of letter of SSP, Pauri Garhwal, dated 14.01.2020, has also been filed on behalf of respondents (Annexure: CA-3-ii). Copy of preliminary enquiry report dated 18.12.2019 (Annexure: CA-4) has also been brought on record on behalf of respondents.

4. Ld. A.P.O. submitted that the orders impugned do not warrant any interference. The Court should not interfere with the punishment of ‘censure entry’ awarded to the petitioner by the appointing authority/disciplinary authority, which have been upheld by the appellate authority. Ld. Counsel for the petitioner, on the other hand, assailed orders under challenge with vehemence.

5. What is misconduct? The same finds mention in Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 , as below:

“3(1) Every Govt. servant shall, at all times, maintain absolute integrity and devotion to duty;

3(2) Every Govt. servant shall, at all times, conduct himself in accordance with the specific and implied orders of Government regulating behaviour and conduct which may be in force.”

The word ‘devotion’, may be defined as the state of being devoted, as to religious faith or duty, zeal, strong attachment or affection expressing itself in earnest service.

6. Discipline is the foundation of any orderly State or society and so the efficiency of Government depends upon (i) conduct and behavior of the

Government servants (ii) conduct and care in relation to the public with whom the Government servants have to deal. The misconduct of the Government servants reflects on the Government itself and so it is essential that the Government should regulate the conduct of Government servants in order to see the interest of Government, as well as, the interest of the public.

7. Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and at all times, conduct himself in accordance with specific or implied order of Government. It is duty of the servant to be loyal, diligent, faithful and obedient.
8. The terms 'misconduct' or 'misbehaviour' have not been defined in any of the Conduct Rules or Civil Services Rules. The dictionary meaning of the word 'misconduct' is nothing but bad management, malfeasance or culpable neglect of an official in regard to his office. In short, it can be said that misconduct is nothing but a violation of definite law, a forbidden act. The term 'Misbehaviour' literally means improper, rude, or uncivil behaviour.
9. The word 'misconduct' covers any conduct, which, in any way, renders a man unfit for his office or is likely to hamper or embarrass the administration. Misconduct is something more than mere negligence. It is intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. Both in law and in ordinary speech, the term 'misconduct' usually implies an act done willfully with a wrong intention and has applied to professional acts. So dereliction of or deviation from duty cannot be excused.
10. The Conduct Rules, therefore, stipulate that a Government servant shall, at all times, conduct himself in accordance with orders of the Government (specific or implied) regulating behaviour and conduct which may be in force.
11. A Division Bench of Hon'ble High Court of Judicature at Allahabad, in *Bhupendra Singh and others vs. State of U.P. and others*, (2007)(4) ESC 2360 (ALL)(DB), has held that the provisions of Rule 4(1)(b)(iv) of

the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 (for short, Rules of 1991) are valid and *intra vires*. Censure entry, therefore, can be awarded.

12. Here the petitioner has been awarded minor penalty, in which the procedure prescribed is as follows;

Sub- rules (2 & 3) of Rule 5 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991

“Sub-rule (2)— The cases in which minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in sub-rule (2) of Rule 14.

Sub-rule (3)— the cases in which minor penalties mentioned in sub-rule (2) & (3) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in Rule 15.”

13. The next question would be, what are the minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4? The reply is as follows:

(b) Minor Penalties:

(i) *Withholding of promotion.*

(ii) *Fine not exceeding one month's pay.*

(iii) *Withholding of increment, including stoppage at an efficiency bar.*

(iv) *Censure.*

14. The petitioner has been awarded ‘censure entry’ for her misconduct. What is the extent of Court’s power of judicial review on administrative action? This question has been replied by Hon’ble Supreme Court, in para 24 of the decision of *Nirmala J. Jhala vs. State of Gujrat and others*, (2013) 4 SCC 301, in the following words:

“24. The decisions referred to hereinabove highlight clearly, the parameter of the Court’s power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/ corrupt practice. In other words, the authority must act in good faith. Neither the question

as to whether there was sufficient evidence before the authority can be raised/ examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene.”

15. ‘Judicial review of the administrative action’ is possible under three heads, viz;

- (a) illegality,
- (b) irrationality and
- (c) procedural impropriety.

Besides the above, the ‘doctrine of proportionality’ has also emerged, as a ground of ‘judicial review’.

16. A decision rendered by Hon’ble Apex Court in *Krushnakant B. Parmar vs Union of India and another*, (2012) 3 SCC178, has been referred to by Ld. Counsel for the petitioner. In the said decision, Hon’ble Apex Court has held that for sustaining such the allegation of unauthorized absence, it must be proved that such absence was willful. If absence was due to compelling circumstances, under which it was not possible to report for or perform duty, such absence cannot be held to be willful and employee guilty of misconduct. In the case of *Parmar*, Hon’ble Apex Court noticed that neither inquiry officer nor appellate authority found absence of appellant willful despite his specific evidence that he was prevented from attending duty and was not allowed to sign attendance register. Evidence produced by the appellant to substantiate his claim was ignored by authority concerned. Impugned order of dismissal passed by the disciplinary authority, as affirmed by the appellate authority, CAT and Hon’ble High Court were set aside. Appellant was directed to be reinstated and paid 50% back wages.

17. The petitioner has brought on record medical prescriptions of Alam Herbal & Stone Care Center dated 15.08.2019 (Annexure: A7); blood report of Sero Tech Pathology Lab, dated 15.08.2019 (Annexure: A 8), according to which IgM and IgG were found, denoting that primary dengue was detected and secondary dengue was suspected; outdoor patient card dated 17.08.2019 of Police Hospital, Dehradun (Annexure: A 9), in which Medical Officer, Police Hospital, referred her to higher center for treatment; OPD card of Government Doon Medical College and Hospital, Dehradun (for short, Doon Medical College) (Annexure: A 10) showing that she had complaints of dengue fever and thrombocytopenia. She was admitted in Doon Medical College for her treatment of platelets trend. Dr Ranu Pathology Center's blood test report (Annexure: A 11) shows the value of her platelets count as 35 thousand against normal value of 1.50 lacs to 4.50 lacs; hematology report dated 19.08.2019 of Doon Medical College (Annexure: A 12), shows value of platelets count to as 90 thousand against the normal value of 1.50 lacs to 4.50 lacs; blood requisition form (Annexure: A 13) -clinical diagnosis- dengue fever, shows type of request was urgent, blood sample was collected; Principal Superintendent, Doon Hospital, issued medical certificate that she was suffering from dengue fever and was advised rest from 17.08.2019 to 15.09.2019, also certifying that she was found fit to join duties from 15.09.2019 onwards; OPD card of Doon Medical College dated 12.09.2019 (Annexure: A 15), in which she was advised rest for three days and was found to be fit to join duty after 15.09.2019; discharge card dated 30.08.2019 issued by Doon Medical College (Annexure: A 16), showing that she was under treatment for dengue fever. *Vide* letter dated 15.09.2019 (copy: Annexure- A17), she wrote to Respondent No.3 that since she was suffering from dengue, therefore, she came to Dehradun to carry her household belongings, she was admitted in Doon Hospital and was marked absent, therefore, prayer was made to admit her in Police Lines.
18. The petitioner was undoubtedly suffering from dengue. Her platelet counts were reduced. She was initially admitted in Police Hospital, from where she was referred to the higher center. Then she was treated in Doon Medical College from time to time. Only when she recovered, the

Medical Officer gave her fitness certificate, whereafter she gave her joining at P.S. Laxman Jhoola, District Pauri Garhwal. The Tribunal is satisfied, on the basis of the documents brought on record, and on objective evaluation that her absence from duty was not willful. She was prevented from attending her duty because she was suffering from dengue fever. No doubts can be raised about the explanation of the petitioner that she was absent from duty for 31 days because she was suffering from dengue fever and then she was admitted in different hospitals. The fact that she was initially admitted in Police Hospital and then in Government Medical College, gives strength to her explanation. Medical-Certificates given by her are not from private hospitals. It cannot be said that they could be 'procured'. These prescriptions and OPD cards are from Govt. hospitals given by responsible Medical Officers, therefore, the petitioner is entitled to the benefit of *Krushnakant B. Parmar (supra)* decision to hold that her absence from duty was not deliberate.

19. But, Ld. A.P.O. submitted that the petitioner left the jurisdiction of P.S.Laxman Jhoola without getting her departure entered in the GD. Ld. A.P.O. further submitted that as per Chapter XXII of U.P. Police Regulations, the General Diary (Police Form No. 217) shall be written in duplicate under the superintendence of the officer-in-charge of the station, who is responsible for entries made in it and must sign it daily. The duplicate copy will remain in the Police Station, the original will be sent to the Superintendent or Assistant or Deputy superintendent-in-charge of the sub-division. The Diary should be a complete but brief record of the proceedings of the Police and of occurrences reported to them or of which they have obtained information. The following matters must be recorded in G.D.:

“(1). Report of the morning parade with a note of the cause of absence of any officer or man.

.....

- (3). Distribution of daily duties and grant of casual leave.
 (4). Departure and return of police officers on and from duty, transfer or leave.
 (5). Reports of the performance of all duties e.g., beat duty, process-serving, inspection and investigation.

(6). Transfer of charge of the Police Station or of the Head Moherrir's duties.

.....
 (14). Reports of all occurrences which under the law have to be reported or which may require action on the part of the Police or the Magistracy, or of which the district authorities ought to be informed.

(16). Details of papers received and dispatched.

(17). Inspection of the Station by Gazette Officers and Inspectors.

20. The Tribunal is in agreement with such submission of Ld. A.P.O. There appears to be no sufficient explanation from the petitioner as to why she did not get her departure from P.S. Laxman Jhoola entered in the GD. Extract of GD dated 16.08.2019, which has been filed as Annexure: CA-1 along with CA (on behalf of respondents), clearly speaks that the petitioner was absent from the P.S. premises and S.O. of the P.S. concerned marked her absent. It is the duty of every Police Officer posted in the P.S. to get an entry made in the GD regarding his/her arrival or departure. The same has not been done in the instant case. G.D. is very important piece of document in any Police Station. It shows the presence or absence of the Police Officials. Whenever any Police Official goes for Govt. duty or goes for investigation, he or she is required to say so, by entering the same in the GD. The petitioner did not do the same. Although, in one of the documents (Annexure: A-3), she said that she informed the Head Moherrir Hemraj, but said fact is not culled out from record, so, although there was an excuse for the petitioner to have got herself medically examined in the Police Hospital and then admitted in Govt. Medical College, but it was her duty to have got her departure from the jurisdiction of P.S. Laxman Jhoola entered in the G.D.. In other words, the petitioner has been able to explain her absence for 31 days, but she could not explain as to why she did not get her departure to Dehradun entered in the G.D. of P.S. Laxman Jhoola. This Tribunal is, therefore, of the view that although sufficient explanation has been furnished by the petitioner for remaining absent for 31 days, but she has not been able to explain satisfactorily as to why she did not cause her departure from P.S.Laxman Jhoola to Dehradun

entered in the G.D. of 16.08.2019. The petitioner is, therefore held guilty of misconduct.

She did not get her departure from P.S.Laxman Jhoola entered in the GD of 16.08.2019 that she was going to Dehradun. Such finding of the disciplinary authority as upheld by the appellate authority is affirmed. But holding her guilty that she was absent without reasonable ground, such finding is interfered with. A case of misconduct is, nevertheless, made out.

21. **A case for limited interference, in the orders impugned, is therefore, made out. Whereas, we hold that the petitioner has been able to explain her absence from duty for 31 days, she has failed to explain as to why she left the jurisdiction of PS Laxman Jhoola without causing such fact entered in the GD. A case of ‘misconduct’ has, however, been made out. We interfere only with those parts of the impugned orders, whereby the petitioner is found guilty of being absent from duty for 31 days. We however, uphold those parts of impugned orders, whereby the petitioner has been held guilty of not causing her departure entered from the PS concerned in the GD.**
22. Normally, this Tribunal would have converted minor punishment of ‘censure entry’ into ‘other minor punishment’, such as fatigue duty, etc., but Ld. A.P.O. vehemently opposed such jurisdiction of the Tribunal, arguing that the Tribunal has no authority to substitute any ‘minor punishment’ with ‘other minor punishment’ on its own and should leave it to the discretion of the Ld. Authorities below to do it. Ld. A.P.O. argued that Courts cannot assume and usurp the discretion of the appellate authority and substitute lesser punishment.
23. According to Rules 24 and 25 of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules , 1991, appellate authority / revisional authority has power to enhance the punishment and the Govt. can modify or revise / reduce the order passed by such authority or enhance the penalty imposed upon the delinquent. Rules 24 and 25 read as below:

24. Enhancement of punishment—A punishment may be enhanced by :— (a) an appellate authority on appeal; or (b) any authority superior to the authority to whom an application will lie, in exercise of revisionary powers : Provided that before enhancing the punishment such authority shall call upon the officer punished, to show cause why his punishment should not be so enhanced, and that an order by such authority so enhancing a punishment shall, be deemed to be an original order of punishment.

25. Powers of Government—Notwithstanding anything contained in these Rules, the Government may, on its own motion or otherwise, call for and examine the records of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and against which no appeal has been preferred under these rules and— (a) confirm, modify or revise the order passed by such authority; or (b) direct that a further inquiry be held in the case; or (c) reduce or enhance the penalty imposed by the order; or (d) make such other order in the case as it may deem fit : Provided that where it is proposed to enhance the penalty imposed by any such order the police officer concerned shall be given an opportunity of showing cause against the proposed enhancement.

[Emphasis supplied]

24. In such circumstances, does it lie in one's mouth to say that the Tribunal cannot order 'other minor punishment' in place of 'minor punishment of censure entry' ?

25. In the decision rendered in *Rajasthan Tourism Development Corporation Limited and Another vs. Jai Raj Singh Chauhan, (2011)13 SCC 541*, Hon'ble Supreme Court has observed, as below:

“22. We have no doubt that if the learned Single Judge and the Division Bench were apprised of the law laid down by this Court, the former may have instead of substituting the punishment of dismissal from service with that of stoppage of two increments with cumulative effect remitted the matter to the disciplinary authority with a direction to pass fresh order keeping in view the fact that the writ petitioner had already suffered by remaining out of employment for a period of about seven years.

23. At this juncture, we may note that learned counsel for the appellants fairly agreed that ends of justice will be served by remitting the matter to the disciplinary authority with a direction that the respondent be awarded a minor punishment provided an undertaking is given by him not to claim wages for the period between the dates of dismissal and reinstatement. Learned counsel for the respondent that his client will not

claim pay and allowances for the period during which he remained out of employment.

24. In the result the appeal is allowed, the orders passed by the learned Single Judge and the Division Bench of the High Court are set aside and the following directions are given:

1. The Corporation is directed to reinstate the respondent within a period of 15 days from the date of receipt/production of a copy of this order.

2. The respondent shall not be entitled to wages for the period between the dates of dismissal and reinstatement.”

26. In the instant case, since the rigour of punishment should be mellowed down in view of the fact that the Tribunal has interfered with a part of ‘misconduct’, committed by the petitioner, therefore, we deem it appropriate to set aside the order of ‘censure entry’ and remit the matter back to the authorities below to reconsider the punishment (of censure entry) awarded to the petitioner. Ld. Authorities below may, in their discretion, substitute ‘other minor punishment’ in place of ‘minor punishment’ of censure entry, keeping in view the fact that the petitioner was able to explain, on the basis of documentary evidence, that her absence from duty for 31 days, was *bonafide*, and not deliberate.

27. So far as second prayer of the petitioner is concerned, since she was under treatment in Govt. Medical College, therefore, it will be in the fitness of things, if SSP, Pauri Garhwal, Respondent No.3 is directed to grant the petitioner medical leave for 31 days, if the same is due, in her account. She has already moved an application for the same. If the medical leave is granted to the petitioner, the order directing ‘no work no pay’ for 31 days (her unauthorized absence) shall stand set aside. Subsistence allowance given to her during suspension period, in that case, shall be set-off.

28. Para 54-B, Financial Handbook, Vol. 2 to 4, as also Rule 22 of the Rules of 1991, read as below:

“54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with

reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2).....

[*Emphasis supplied*]

A notice was given to the petitioner before denying full salary to her during suspension period, but she did not reply.

Rule 22 of the Rules of 1991 is quoted as below, for academic purposes:

“ 22. Counting of dismissal period—Where an appeal against the orders of dismissal or removal succeeds, the appointing authority shall consider and make a specific order (i) regarding the period of suspension preceding his dismissal or removal as the case may be, and (ii) whether or not the said period shall be treated as a period spent on duty in accordance with the provisions of Rule 54 of the Financial Hand Book, Vol. II, Parts II to IV.”

[*Not applicable in the instant case*]

Para 54-B Financial Handbook (*supra*), therefore, provides that when a Govt. servant, who has been suspended, is reinstated, the authority competent to order reinstatement, shall consider and make a specific order regarding pay and allowances to be paid to the Govt. servant for the period of suspension ending with reinstatement and whether or not the said period shall be treated as a period spent on duty.

29. If, medical leave is not sanctioned to the petitioner, as found not due in her account, a direction is given to the authority competent to consider and make a specific order regarding pay and allowances to be paid to the petitioner for the period of suspension and whether or not the said period shall be treated as a period spent on duty, at an earliest possible and without unreasonable delay, as per law, after giving one more opportunity of being heard.

30. Claim petition is, accordingly, disposed of with the following conclusions-cum-directions:

(i) There is misconduct on the part of the petitioner in not causing her departure from the jurisdiction of PS Laxman Jhoola entered in the GD. The petitioner has, however, been able to satisfactorily account for her absence from duty for 31 days, which was *bonafide* and not willful. In the decision of *Parmar (supra)* Hon'ble Apex Court has held that for sustaining allegation of unauthorized absence, it must be proved that such absence was willful. If absence was due to compelling circumstances, under which it was not possible to report for or perform duty, such absence cannot be held to be willful and an employee guilty of misconduct.

'Censure entry' awarded to the petitioner is, therefore, set aside and the matter is remitted to Ld. Authorities below to consider that since her absence from duty was not willful, therefore, the rigour of censure entry awarded to the petitioner may be mellowed down. Ld. Authorities below may do so and pass a fresh order, after giving an opportunity of hearing to the petitioner, in accordance with law, at an earliest possible and without unreasonable delay.

(ii) The application of the petitioner for grant of medical leave shall be considered by the appropriate Authority and, in case 31 days' medical leave is due in her account, she shall be granted medical leave. In such case, the subsistence allowance which was given to the petitioner during suspension period, shall be adjusted (set off).

(iii) In case it is not possible to grant her medical leave, the same not being due in her account, then fresh orders in terms of para 54-B Financial Hand Book Vol. 2 to 4 be passed, after giving her an opportunity of being heard, at an earliest possible and without unreasonable delay.

In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 22, 2021
DEHRADUN

